Supreme Court, U.S.
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No. 09-950

In The Supreme Court of the United States

MARCI J. BITTNER,

Petitioner,

v.

SNYDER COUNTY, PENNSYLVANIA, and MICHAEL SHOLLEY, District Attorney of Snyder County,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION OF RESPONDENTS TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Due Process Pursuant To The Fourteenth Amendment Is Violated When A District Attorney Prosecuting A Criminal Case Requests That The Court Vacate An Executed Bench Warrant Issued For A Witness, Who Failed To Appear Pursuant To A Subpoena, And The Witness Is Released On The Same Date As The Arrest Without A Judicial Hearing On The Bench Warrant.

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STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

The United States Court of Appeals for the Third Circuit rendered its decision on September 23, 2009. Bittner filed her Petition for Rehearing en Banc or, in the alternative, for Panel Rehearing on October 8, 2009, which was a day late under Federal Rule of Appellate Procedure 40. The United States Court of Appeals for the Third Circuit denied the Petition for Rehearing en Banc on November 12, 2009. Bittner timely filed her Petition for Writ of Certiorari on February 9, 2010.

STATEMENT OF THE CASE

Petitioner Marci J. Bittner seeks review of a decision of the United States Court of Appeals for the Third Circuit arising out of her 42 U.S.C. §1983 claim against Snyder County, Pennsylvania and Michael Sholley, District Attorney of Snyder County, Pennsylvania, in his official capacity. Bittner's claim arises out of her May 30, 2007 arrest on a bench warrant issued by the Court of Common Pleas of Snyder County and her subsequent release from custody via vacation of the bench warrant by the Court. A judicial hearing was not conducted on the bench warrant under Pennsylvania Rule of Criminal Procedure

150,[1] prior to the vacation of the warrant on motion of the District Attorney.

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[1] Pennsylvania Rule of Civil Procedure provides, in relevant part, that:

Rule 150. Bench Warrants

(A) In a court case when a bench warrant is executed, the case is to proceed in accordance with the following procedures.

(1) When a defendant or witness is arrested pursuant to a bench warrant, he or she shall be taken without unnecessary delay for a hearing on the bench warrant. The hearing shall be conducted by the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or any the president judge's designee to conduct bench warrant hearings.

. . .

(3) When the individual is arrested in the county of issuance, if the bench warrant hearing cannot be conducted promptly after the arrest, the defendant or witness shall be lodged in the county jail pending the hearing. The authority in charge of the county jail promptly shall notify the court that the individual is being held pursuant to the bench warrant.

. . .

(5) The bench warrant hearing shall be conducted without unnecessary delay after the individual is lodged in the jail of the county of issuance on that bench warrant.

(a) When the bench warrant is issued by the supervising judge of a "multi-county"

(Continued on following page)

Bittner's claim stems from her failure to appear at the criminal trial of her ex-husband. On or about June of 2006, she was allegedly contacted by the Snyder County District Attorney's Office and was notified that her testimony would be needed at the trial of her ex-husband. Bittner claims to have informed the District Attorney's Office that she would need transportation to Snyder County and certain child care services while she testified.

Bittner claims that the District Attorney of Snyder County requested a subpoena to attend and testify from the Prothonotary or Clerk of Courts of Snyder County and subsequently served the subpoena on Bittner on May 21, 2007 via personal service by Patrolman Chad Thomas of the Middleburg

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investigating grand jury, the individual shall be detained only until the supervising judge is available to conduct the bench warrant hearing.

(b) In all other cases, the individual shall not be detained without a bench warrant hearing on that bench warrant longer than 72 hours, or the close of the next business day if the 72 hours expires on a non-business day.

(6) At the conclusion of the bench warrant hearing following the disposition of the matter, the judicial officer immediately shall vacate the bench warrant.

. . .

Borough Police Department. Bittner alleges that she again informed the District Attorney's Office that she needed transportation from her home to the courthouse and needed child care services. Bittner alleges that a staff member at the District Attorney's Office informed her that transportation would be provided as would child care services.

Bittner claims that, on May 29, 2007, a bench warrant was issued for her arrest by the Snyder County Court of Common Pleas at the request of the District Attorney's Office after she failed to appear as a witness at her ex-husband's criminal trial. On the following day, May 30, 2007, Bittner was arrested pursuant to the bench warrant issued by the court and was allegedly driven for 2.5 hours to the courthouse.

Bittner alleges that she did not immediately receive a hearing on her bench warrant after being taken into custody, but rather was taken directly to the Snyder County District Attorney's Office. According to Bittner's Complaint, she claims she was "interview[ed] . . . by the District Attorney of Snyder County, [and] Plaintiff reminded the District Attorney that his secretary or a staff member of his Office had promised that transportation would be provided to her to testify at the criminal trial of her ex-husband. . . "[2] Unlike Bittner's question posed to this Honorable Court, Bittner never claimed in her Complaint that she was subjected to "verbal abuse,"

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[2] Appendix A, Complaint, ¶34.

"physical intimidation," or received threats to her family during the time she was at the District Attorney's Office.[3]

At 2:02 p.m. on May 30, 2007, the same day as Bittner's arrest and while at the District Attorney's Office, Bittner claims that the District Attorney's Office filed a Petition to Withdraw the Bench Warrant related to Bittner. Immediately thereafter, Bittner claims that the District Attorney petitioned to withdraw the bench warrant on the basis that Bittner assured him that she would appear for trial in the future.[4] Bittner claims that eight minutes later the Court of Common Pleas vacated the bench warrant issued for her arrest. Bittner allegedly did not attend any hearing or appear before the judge who issued the bench warrant. Bittner claims that Snyder County, acting through its District Attorney, failed to afford her due process since instead of affording her a judicial hearing after her arrest on the bench warrant, the District Attorney simply filed a motion to vacate the bench warrant.

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[3] *See* Appendix A.

[4] Appendix A, Complaint, ¶35.

REASONS IN SUPPORT OF DENIAL OF THE PETITION FOR A WRIT OF CERTIORARI

This Honorable Court should deny Bittner's Petition for a Writ of Certiorari because Bittner has failed to present compelling reasons for this Court to exercise its extraordinary and discretionary jurisdiction. Although not exhaustive, Supreme Court Rule 10 sets forth guidelines for the certiorari process and when same will be granted. Rule 10 provides:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; had decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of

> another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Supreme Court Rule 10.

I. Bittner Has Failed To Cite To Any Compelling Reason For This Court To Grant Certiorari

In this case, the Third Circuit Court of Appeals concluded that Bittner was not deprived of her constitutional rights because she "was present in the courthouse pursuant to a bench warrant" and "the arrest warrant was vacated before a hearing could be conducted."[5] In filing her Petition, Bittner has curtailed her otherwise scattershot claims and theories of liability set forth in her Complaint and sought review by this Honorable Court on the narrow issue of whether having her meet with the District

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[5] *See* Opinion of the Third Circuit, pp.5 and 6.

Attorney before having a hearing on the bench warrant before the Court violated Bittner's constitutional rights. This Petition does not seek to clarify a point of law that has escaped review or to provide this Honorable Court with an opportunity to provide clarity on a point of disputed law, but rather to have the facts of her case re-analyzed under settled law.[6] Indeed, contrary to Bittner's claim, none of the cases cited by Bittner suggests that the Third Circuit's determination conflicts with the decisions of this Court or any other court of appeals. Those cases all involve issues concerning the constitutionality of the length of detention and not the issue of whether a decision to file a motion to vacate the bench warrant instead of taking the detainee for a hearing was constitutional.

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[6] Bittner's Petition for a Writ of Certiorari also includes irrelevant, immaterial, and outright outrageous and scandalous material. Specifically, footnote 1 of Bittner's Petition is a misstatement of the decisions below. In addition, Footnote 3 of Bittner's Petition relates to a kickback scandal involving two former judges of the Court of Common Pleas of Luzerne County that has absolutely no relationship with this case. Bittner makes no connection between her case and the Luzerne County scandal involving the two indicted judges. Even raising this scandal, in the instant matter, and, by implication, attempting to associate Respondent Michael Sholley with the same, is outrageous and scandalous. Petitioner's reliance on that material demonstrates the weakness of her arguments.

A. The Point of Law At Issue Needs No Clarification Given The Instant Facts

This Honorable Court in *Baker v. McCollan* explained that after arrest pursuant to an arrest warrant, "we are quite certain that a detention of three days . . . does not and could not amount to" a deprivation of liberty without due process of law. *Baker v. McCollan*, 443 U.S. 137, 144 (1979).

> Obviously, one in respondent's position could not be detained indefinitely in the face of repeated protests of innocence even though the warrant under which he was arrested and detained met the standards of the Fourth Amendment. For the Constitution likewise guarantees an accused the right to a speedy trial, and invocation of the speedy trial right need not await indictment or other formal charge; arrest pursuant to probable cause is itself sufficient. We may even assume, arguendo, that, depending on what procedures the State affords defendants following arrest and prior to actual trial, mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of "liberty . . . without due process of law."

Id. at 144-45. Since Bittner's detention fell within the amount of time approved in *Baker v. McCollan*, the lower court's decision does not conflict with the decision of this Court.

In the decisions of other courts of appeals cited by Bittner, the length of detention greatly exceeded the amount of time that Bittner was in custody. In *Armstrong v. Squadrito*, 152 F.3d 564 (7th Cir. 1998), the court held that a fifty-seven (57) day detention without a judicial hearing following arrest pursuant to a body attachment warrant did not comport with due process. In *Coleman v. Frantz*, 754 F.2d 719 (7th Cir. 1985), the court ruled that an eighteen (18) day confinement without a judicial hearing on a bench warrant offended substantive due process. A claim arising out of an alleged due process violation, under these circumstances, is grounded in the prolonged detention of an individual without judicial review, not whether a hearing occurs before a judicial officer regardless of the length of the detention. Since Bittner's detention fell within the amount of time approved in *Baker v. McCollan*, the lower court's decision does not conflict with the decisions of other courts of appeal.

The Third Circuit's decision barring Bittner's due process claim precisely followed this Court's thirty (30) year-old precedent. The Third Circuit, upon review of Bittner's due process claim arising out of the lack of a post-arrest hearing, ruled that "we fail to see a violation of that right inasmuch as the arrest warrant was vacated before a hearing could be conducted."[7] At the moment the warrant was vacated, Bittner's liberty was restored. Bittner admits that

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[7] *See* Opinion of the Third Circuit, p.6.

she was released on the very day of her arrest and, within eight (8) minutes of the District Attorney's request to have the warrant vacated, the court vacated the warrant. Ironically, Bittner appears to claim that she would have preferred to have been detained up to 72 hours pursuant to Pennsylvania Rule of Criminal Procedure 150 and as permitted by this Court's precedent in order to have a judicial hearing, as opposed to having her liberty restored more quickly through the filing by the District Attorney of a motion to vacate the bench warrant.

This Honorable Court's due process jurisprudence provides the necessary guidance to addresses Bittner's due process claim. Bittner's Petition for a Writ of Certiorari neither raises a novel legal issue nor raises an issue that has at its foundation an important federal question that has gone unaddressed or that has created a conflict among the courts. Simply put, Bittner seeks yet another review of the facts of her case under well-established precedent. Therefore, this Honorable Court should deny Bittner's Petition for a Writ of Certiorari because no compelling reason exists for exercising its powers.

B. Even If Certiorari Is Granted And The Third Circuit Decision Reversed, Bittner's Claims Will Likely Be Dismissed Based On Eleventh Amendment Immunity

Bittner's due process claim, even if reviewed by this Honorable Court and a finding in Bittner's favor

were rendered, would not provide Bittner with any relief on remand.

Bittner claims that Snyder County, acting through its District Attorney's Office, violated her rights because the Snyder County District Attorney's Office allegedly has a policy, custom, or practice "to not provide a post-arrest hearing" with regard to bench warrants, but rather, follows a policy, custom, or practice, "to vacate a bench warrant instead of providing a post-arrest hearing."[8]

When acting in their official capacity and while undertaking their "basic function – enforcement of the Commonwealth's penal statutes," district attorneys are representatives of the Commonwealth, not the county. *Williams v. Fedor*, 69 F. Supp. 2d 649, 660 (M.D. Pa. 1999) *aff.* 211 F.3d 1263 (3d Cir. 2000). District attorneys have a dual or hybrid role. "When 'enforcing their sworn duties to enforce the law . . . they act as agents of the State [but] when county prosecutors are called upon to perform administrative tasks unrelated to their strict prosecutorial functions . . . the county prosecutor in effect acts on behalf of the county that is the situs of his or her office.'" *Carter v. City of Philadelphia*, 181 F.3d 339, 353 (3d Cir. 1999). Therefore, district attorneys when acting in their official role as prosecutors for the state are entitled to Eleventh Amendment immunity. *Williams*

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[8] Appendix A, Complaint, ¶¶58-59.

v. Fedor, 69 F. Supp. 2d 649, 659-663 (M.D. Pa. 1999) *aff.* 211 F.3d 1263 (3d Cir. 2000).

In *Roberson v. County of Essex*, a case relied upon by Bittner,[9] the plaintiff was detained on a bench warrant for two (2) months without a judicial hearing. *Roberson v. County of Essex*, 2006 WL 2844425, *1 (D.N.J. Oct. 2, 2006). The plaintiff brought suit against the district attorney's office, among others, claiming that it failed to ensure plaintiff's appearance before a judicial officer. *Id.* at *3. The plaintiff's claim was dismissed as against the district attorney's office pursuant to the Eleventh Amendment. *Id.* The court explained, assuming *arguendo*, that the prosecutor's office had an obligation to ensure a judicial hearing, that bringing a detainee before a judicial officer is "undoubtedly 'criminal business.'" *Id.*

In the instant case, Snyder County, the municipality, did not take any action relevant to Bittner's allegations, and Snyder County, acting through its District Attorney's Office, is entitled to immunity from Plaintiff's claims pursuant to the 11th Amendment.[10] Bittner claims that Snyder County's District Attorney's Office had a policy of not providing post-arrest hearings on bench warrant arrests for failing

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[9] Petition for Writ of Certiorari, p.14.

[10] *Chisolm v. McManion*, 275 F.3d 315, 322-23 (3d Cir. 2001); *Carter v. City of Philadelphia*, 181 F.3d 339, 353 (3d Cir. 1999).

to appear when subpoenaed, and she alleges that Snyder County, through its District Attorney's Office, followed a policy of vacating the warrants instead of providing a hearing. The actions complained of by Bittner arise in the basic and fundamental role of a prosecutor in compelling the attendance of witnesses at criminal trials and the disposition of bench warrants for those who fail to appear. Few things are more fundamental to the prosecutorial function of a district attorney than compelling the attendance of a witness at a criminal trial to establish the state's case against the accused. *Schneyder v. Smith*, 2007 U.S. Dist. LEXIS 1895 (E.D. Pa. 2007). Bittner does not complain about an administrative act, but rather an act rooted in the Snyder County District Attorney's Office's role as advocate for the state in prosecuting criminal cases. Therefore, on remand, even if Bittner would receive all the relief she requests from this Honorable Court, she would likely face dismissal of her action based on the Eleventh Amendment. For this reason, this Honorable Court should also deny the Petition for Writ of Certiorari.

CONCLUSION

For the foregoing reasons, Respondents Snyder County, Pennsylvania and Michael Sholley, District Attorney of Snyder County, respectfully request that this Honorable Court deny Bittner's Petition for a Writ of Certiorari.

Respectfully submitted,

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